

MEMORANDUM

Agenda Item No. 14(A)(4)

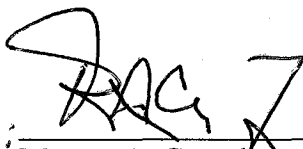
TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: December 19, 2006

FROM: Murray A. Greenberg
County Attorney

SUBJECT: Resolution authorizing
interlocal agreement
between Miami-Dade County
and City of North Miami
for issuance of Health Care
Facilities Revenue Bonds
for The Imperial Club
Project

The accompanying resolution was prepared and placed on the agenda at the request of Commissioner Sally A. Heyman.

for: 

Murray A. Greenberg
County Attorney

MAG/bw



MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: December 19, 2006

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County Attorney

SUBJECT: Agenda Item No. 14(A)(4)

Please note any items checked.

- ☒ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Bid waiver requiring County Manager's written recommendation
- ☐ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☐ Housekeeping item (no policy decision required)
- ☐ No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 14(A)(4)
12-19-06

RESOLUTION NO. _____

RESOLUTION AUTHORIZING AND APPROVING
EXECUTION AND DELIVERY OF INTERLOCAL
AGREEMENT BETWEEN MIAMI-DADE COUNTY, FLORIDA
AND CITY OF NORTH MIAMI, FLORIDA; APPROVING
ISSUANCE OF NOT TO EXCEED \$29,300,000 CITY OF NORTH
MIAMI, FLORIDA HEALTH CARE FACILITIES REVENUE
BONDS (THE IMPERIAL CLUB PROJECT) BY CITY OF
NORTH MIAMI, FLORIDA, FOR PURPOSES OF SECTION
147(f) OF INTERNAL REVENUE CODE OF 1986, AS
AMENDED

WHEREAS, pursuant to the Florida Industrial Development Financing Act, Chapter 159, Part II, Florida Statutes, as amended, the City of North Miami, Florida (the "Issuer") and Miami-Dade County, Florida (the "County") each is authorized to issue bonds to finance and refinance the cost of capital improvements relating to certain health care facilities; and

WHEREAS, Affordable Community Housing Trust – Alpha, a California non-profit public benefit corporation (the "Company"), owns an independent and assisted elderly living facility, known as The Imperial Club, located at 2751 Northeast 183rd Street, Aventura, Florida, within the geographic limits of the County (the "Facility"); and

WHEREAS, the Company has requested that the Issuer issue its Health Care Facilities Revenue Bonds (The Imperial Club Project), in one or more series, as bonds the interest on which is excludable from gross income for federal income tax purposes, in the aggregate principal amount of not to exceed \$29,300,000 (the "Bonds") and lend the proceeds of the Bonds to the Company for the purpose of, together with any other available moneys, (i) refunding all of the outstanding City of North Miami, Florida Health Care Facilities Revenue Bonds (The

Imperial Club Project), Series 1998A, and all of the outstanding City of North Miami, Florida Health Care Facilities Revenue Bonds (The Imperial Club Project), Subordinate Series 1998B (collectively, the "Prior Bonds"), proceeds of which were loaned to the Company for the principal purposes of, together with proceeds of other bonds issued by the Issuer and loaned to the Company and other available moneys, refinancing the cost of acquiring the Facility and financing the cost of certain additional capital improvements at the Facility; (ii) financing the cost of certain additional capital improvements at the Facility; and (iii) paying certain costs of issuance of the Bonds and of refunding the Prior Bonds; and

WHEREAS, the Company has requested that the Issuer and the County enter into an interlocal agreement within the terms of Section 163.01, Florida Statutes, as amended (the "Interlocal Act"), authorizing the Issuer to issue the Bonds, the proceeds of which Bonds shall be applied within the jurisdiction of the County for and on behalf of the Company; and

WHEREAS, the Issuer and the County each constitutes a "public agency" within the terms of the Interlocal Act, and are authorized under the Interlocal Act to enter into interlocal agreements with the other; and

WHEREAS, the Issuer and the County desire to enter into the Interlocal Agreement, described below, for the purposes stated above; and

WHEREAS, on November 20, 2006, the Issuer and the County held a joint public hearing (the "TEFRA Hearing") pursuant to a notice published no less than fourteen days prior to November 20, 2006 in The Miami Herald, a copy of such TEFRA Notice is attached as Exhibit A ("TEFRA Notice") and incorporated in this resolution, for the purpose of giving all interested persons an opportunity to express their views, either orally or in writing, in connection with the

Issuer's proposed issuance of the Bonds, as required by Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, the Board of County Commissioners (the "Board") of the County desires to approve the issuance of the Bonds for purposes of complying with Section 147(f) of the Code,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. Authorization of Execution and Delivery of Interlocal Agreement. The Board approves an interlocal agreement in substantially the form attached as Exhibit "B" (the "Interlocal Agreement") between the County and the Issuer which provides for the issuance of the Bonds by the Issuer and the application of the proceeds within the jurisdiction of the County for and on behalf of the Company. The Finance Director is authorized to execute and deliver the Interlocal Agreement, with such changes, alterations and corrections as may be approved by the Finance Director after consultation with the Office of the Miami-Dade County Attorney's office. The Clerk of the Board or any Deputy Clerk is authorized and directed to attest to the seal of the County and to the signature of the Finance Director as they appear on the Interlocal Agreement.

Section 2. Authorization of All Necessary Actions. The Mayor, the County Manager, the Finance Director and all other appropriate officers, employees and agents of the County are authorized and empowered, collectively or individually, to take all actions necessary and to execute and deliver any and all other instruments, documents or contracts on behalf of the County which are necessary or desirable in connection with the execution and delivery of, or the performance of all obligations under, the Interlocal Agreement and which are not inconsistent with the terms and provisions of this Resolution and of the Constitution and laws of the State of Florida.

Section 3. TEFRA Approval of Bonds. The Board ratifies and confirms the form and publication of the TEFRA Notice and the holding of the TEFRA Hearing and approves the issuance of the Bonds by the Issuer, in an aggregate principal amount not to exceed \$29,300,000 for purposes of Section 147(f) of the Code.

The foregoing resolution was sponsored by Commissioner Sally A. Heyman and offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to vote, the vote was as follows:

Joe A. Martinez, Chairman	
Dennis C. Moss, Vice Chairman	
Bruno A. Barreiro	José "Pepe" Diaz
Audrey M. Edmonson	Carlos A. Gimenez
Sally A. Heyman	Barbara J. Jordan
Dorin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 19th day of December, 2006. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

HARVEY RUVIN, CLERK

Approved by County Attorney as
to form and legal sufficiency:



Gerald T. Heffernan

By: _____
Deputy Clerk

EXHIBIT A

PUBLIC HEARING

**NOTICE OF PUBLIC HEARING
CITY OF NORTH MIAMI, FLORIDA
NOT TO EXCEED \$29,300,000
HEALTH CARE FACILITIES REVENUE BONDS
(THE IMPERIAL CLUB PROJECT)**

For purposes of Section 147(f) of the Internal Revenue Code of 1986, as amended, and to provide all interested persons an opportunity to express their views, either orally or in writing, or both, on the proposed issuance of the above-referenced Bonds, NOTICE IS HEREBY GIVEN that the City of North Miami, Florida (the "Issuer") and Miami-Dade County, Florida (the "County") will hold a joint public hearing on November 20, 2006, beginning at 10:00 A.M., or shortly thereafter, in the City Council Chambers, City Hall, City of North Miami, 776 N.E. 125th Street, North Miami, Florida 33161, with respect to the proposed issuance of not to exceed \$29,300,000 aggregate principal amount of City of North Miami, Florida Health Care Facilities Revenue Bonds (The Imperial Club Project) to be issued by the Issuer in one or more series (the "Bonds").

The proceeds of the Bonds will be loaned to Affordable Community Housing Trust – Alpha, a California non-profit public benefit corporation (the "Company"), and used, together with any other available moneys, to (i) refund all of the outstanding City of North Miami, Florida Health Care Facilities Revenue Bonds (The Imperial Club Project), Series 1998A and all of the outstanding City of North Miami, Florida Health Care Facilities Revenue Bonds (The Imperial Club Project), Subordinate Series 1998B (collectively, the "Prior Bonds"), proceeds of which were loaned to the Company for the principal purposes of, together with proceeds of other bonds issued by the Issuer and loaned to the Company and other available moneys, refinancing the cost of acquiring a 216-unit independent living facility (now a 232-unit independent and assisted living facility) for the elderly known as The Imperial Club located at 2751 Northeast 183rd Street, Aventura, Florida, within the geographic limits of the County (the "Facility") and financing the cost of certain additional improvements at the Facility; (ii) finance the cost of certain additional capital improvements at the Facility; and (iii) pay certain costs of issuance of the Bonds and of refunding the Prior Bonds.

The Facility is owned by the Company and managed by Triad Senior Living - Florida, Inc., a Texas corporation authorized to do business in the State of Florida.

The Bonds and the interest thereon shall not constitute a debt, liability, or obligation of the Issuer, the County or the State of Florida or of any political subdivision thereof or a pledge of the faith and credit of the Issuer, the County or the State of Florida or of any such political

subdivision, but shall be payable solely from the revenues payable under a loan agreement to be entered into by and between the Issuer and the Company.

All interested persons are invited to attend and be heard.

NO STENOGRAPHIC RECORD BY A CERTIFIED COURT REPORTER WILL BE MADE OF THE FOREGOING MEETING. ACCORDINGLY, ANY PERSON WHO MAY SEEK TO APPEAL ANY DECISION INVOLVING THE MATTERS NOTICED HEREIN WILL BE RESPONSIBLE FOR MAKING A VERBATIM RECORD OF THE TESTIMONY AND EVIDENCE AT THE MEETING UPON WHICH ANY APPEAL IS TO BE BASED.

IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT OF 1990, PERSONS NEEDING SPECIAL ACCOMMODATION TO PARTICIPATE IN THIS HEARING SHOULD CONTACT THE CITY OF NORTH MIAMI CITY CLERK'S OFFICE NO LATER THAN FOUR (4) DAYS PRIOR TO THE HEARING. TELEPHONE (305) 893-6511 FOR ASSISTANCE; IF HEARING IMPAIRED, TELEPHONE THE TDD LINE AT (305) 893-7936 FOR ASSISTANCE.

November __, 2006

CITY OF NORTH MIAMI, FLORIDA
Frank Wolland, City Clerk

MIAMI-DADE COUNTY, FLORIDA
Harvey Ruvin, County Clerk

EXHIBIT B

INTERLOCAL AGREEMENT

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT (the "Agreement") is dated as of _____ 1, 2006 and is entered into between the CITY OF NORTH MIAMI, FLORIDA (the "Issuer"), a municipal corporation organized and existing under the Constitution and the laws of the State of Florida, and MIAMI-DADE COUNTY, FLORIDA (the "County"), a political subdivision of the State of Florida.

W I T N E S S E T H

WHEREAS, pursuant to the Constitution of the State of Florida and the Florida Industrial Development Financing Act, Chapter 159, Part II, Florida Statutes, as amended (collectively, the "Act"), the Issuer and the County each is authorized to issue bonds to finance and refinance the cost of capital improvements relating to certain health care facilities; and

WHEREAS, Affordable Community Housing Trust – Alpha, a California non-profit public benefit corporation (the "Company"), owns an independent and assisted elderly living facility, known as The Imperial Club, located at 2751 Northeast 183rd Street, Aventura, Florida, within the geographic limits of the County (the "Facility"); and

WHEREAS, the Company has requested that the Issuer issue its Health Care Facilities Revenue Bonds (The Imperial Club Project), in one or more series, as bonds the interest on which is excludable from gross income for federal income tax purposes, in the aggregate principal amount of not to exceed \$29,300,000 (the "Bonds") and lend the proceeds of the Bonds to the Company for the purpose of, together with any other available moneys, (i) refunding all of the outstanding City of North Miami, Florida Health Care Facilities Revenue Bonds (The Imperial Club Project), Series 1998A, and all of the outstanding City of North Miami, Florida Health Care Facilities Revenue Bonds (The Imperial Club Project), Subordinate Series 1998B (collectively, the "Prior Bonds"), proceeds of which were loaned to the Company for the principal purposes of, together with proceeds of other bonds issued by the Issuer and loaned to the Company and other available moneys, refinancing the cost of acquiring the Facility and financing the cost of certain additional improvements at the Facility; (ii) financing the cost of certain additional capital improvements at the Facility; and (iii) paying certain costs of issuance of the Bonds and of refunding the Prior Bonds; and

WHEREAS, the Company has requested that the Issuer and the County enter into an interlocal agreement within the terms of Section 163.01, Florida Statutes, as amended (the "Interlocal Act"),

authorizing the Issuer to issue the Bonds, the proceeds of which Bonds shall be applied within the jurisdiction of the County for and on behalf of the Company; and

WHEREAS, the Issuer and the County each constitutes a "public agency" within the terms of the Interlocal Act, and are authorized under the Interlocal Act to enter into interlocal agreements with the other; and

WHEREAS, the Issuer and the County have agreed to enter into this Agreement for the purposes stated above;

NOW, THEREFORE, for and in consideration of the premises hereinafter contained, and intending to be legally bound hereby, the parties agree as follows:

Section 1. Authorization to Issue the Bonds. The Issuer will issue the Bonds under the Act in an aggregate principal amount not to exceed \$29,300,000. The proceeds of the Bonds shall be loaned to the Company for the purpose of, together with any other available moneys, (i) refunding the Prior Bonds; (ii) financing the cost of certain additional capital improvements at the Facility; and (iii) paying certain costs of issuance of the Bonds and of refunding the Prior Bonds. The Issuer is authorized to exercise all powers relating to the issuance of the Bonds vested in the Issuer pursuant to the Constitution and the laws of the State of Florida and to do all things within the jurisdiction of the County which are necessary or convenient for the issuance of the Bonds without any further authorization from the County to exercise such powers or to take such actions, provided that the Bonds shall be issued on terms consistent with the provisions of this Agreement and one or more bond resolutions to be adopted by the Issuer. All such actions shall be taken in the name of the Issuer.

Section 2. No Pecuniary Liability of the County; Limited Obligation of the Issuer. Neither the provisions, covenants or agreements contained in this Agreement, nor the Bonds issued pursuant to this Agreement shall constitute an indebtedness or liability of the County. It is hereby expressly acknowledged by the parties that the Bonds shall be issued by the Issuer and not by the County. The Bonds, when issued, and the interest thereon shall be limited and special obligations of the Issuer payable solely from the pledged revenues.

Section 3. No Personal Liability. No covenant or agreement contained in this Agreement shall be deemed to be a covenant or agreement of any member, officer, agent or employee of the Issuer or the County in an individual capacity, and no member, officer, agent or employee of the Issuer or the County shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

Section 4. Fees and Expenses. The Company has agreed to pay: (i) to the Issuer, administrative fees relating to the issuance and administration of the Bonds, and (ii) to the County, administrative fees relating to the execution, delivery and administration of this Agreement.

Section 5. Indemnity. The Company, to the fullest extent permitted by law, agrees to indemnify and hold harmless the Issuer and the County, their respective officers, employees and

agents, from and against any and all losses, claims, damages, liabilities or expenses, of every conceivable kind, character and nature whatsoever, including, but not limited to, losses, claims, damages, liabilities or expenses (including reasonable fees of attorneys, accountants, consultants and other experts) arising out of, resulting from or in any way connected with this Agreement or the issuance of the Bonds.

Section 6. Term. This Agreement will remain in full force and effect from the date of its execution, subject to the provisions of Section 7 below, until such time as it is terminated by any party upon 10 days written notice to the other. Notwithstanding the foregoing, it is agreed that this Agreement may not be terminated or modified by any party during any period that the Bonds remain outstanding unless the parties to this Agreement mutually agree in writing to the terms of such termination or modification; provided, however, that the terms of such termination or modification may not, in any manner, impair the contract with the holders of the Bonds. It is further agreed that, in the event of termination, the parties to this Agreement will provide continuing cooperation to each other in fulfilling the obligations associated with the Bonds. Nothing herein shall be deemed in any way to limit or restrict either party from issuing its own obligations or entering into any other agreement for the financing or refinancing of any health care facility which either party may choose to finance.

Section 7. Filing of Agreement. It is agreed that this Agreement shall be filed by the Issuer, or its authorized agent or representative, with the Clerk of the Circuit Court of Miami-Dade County, Florida, in accordance with the Interlocal Act, and that this Agreement shall not become effective until the Issuer or its authorized agent or representative has so filed the Agreement.

Section 8. Severability of Invalid Provisions. If any one or more of the covenants, agreements or provisions herein contained shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions hereof.

Section 9. Miscellaneous.

(a) All notices, demands, formal actions or other communications hereunder shall be in writing and mailed, telegraphed or delivered to:

The Issuer:

City of North Miami, Florida
776 N.E. 125th Street
North Miami, Florida 33161
Attn: City Manager

The County:

Miami-Dade County, Florida
111 N.W. 1st Street
Suite 2550
Miami, Florida 33128
Attn: Finance Director

(or other such addresses as may be designated in writing to the other party)

(b) This Agreement will inure to the benefit of and be binding upon the parties and their successors and assigns, and will not confer any rights upon any other person other than the Company and the owners of the Bonds.

(c) Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provisions of this Agreement.

(d) This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document.

(e) This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

IN WITNESS WHEREOF, the parties to this Agreement have caused this Agreement to be executed by the proper officers thereof and have caused their respective seals to be affixed and attested by the proper officers, all as of the date first above written.

CITY OF NORTH MIAMI, FLORIDA

By: _____
Clarence Patterson
City Manager

(Seal)

Attest:

By: _____
Frank Wolland
City Clerk

MIAMI-DADE COUNTY, FLORIDA

By: _____
Rachel E. Baum
Finance Director

(Seal)

Attest:

By: _____

Deputy Clerk

APPROVAL AND ACKNOWLEDGMENT

Affordable Community Housing Trust – Alpha hereby approves the Interlocal Agreement and acknowledges acceptance of its obligations arising under Sections 4 and 5 of the Interlocal Agreement by causing this Approval and Acknowledgment to be executed by its President, all as of the date of the Interlocal Agreement.

AFFORDABLE COMMUNITY
HOUSING TRUST - ALPHA

By: _____

President